

CITY OF GAITHERSBURG
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Gaithersburg, Maryland
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**BOARD OF APPEALS
RESOLUTION APPROVING**

A PETITION REQUESTING A TWENTY-ONE (21) FOOT VARIANCE OF THE THIRTY (30) FOOT REAR YARD REQUIRED FOR STRUCTURES BY SECTION 24-32(c) OF THE ZONING ORDINANCE (CHAPTER 24 OF THE CITY OF GAITHERSBURG CODE), FOR THE CONSTRUCTION OF A HOUSE ADDITION TO THE REAR OF THE HOUSE IN THE R-90 (MEDIUM DENSITY RESIDENTIAL) ZONE AT 22 MARYLAND AVENUE, LOT 77, REALTY PARK, GAITHERSBURG, MARYLAND.

A-524

O P I N I O N

This proceeding constitutes an appeal pursuant to Article 66B, Section 4.07, of the Annotated Code of the State of Maryland, and Section 24-187(c) of the Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) for a variance from Section 24-32(c). This section requires that all R-90 zoned lots have a thirty- (30) foot rear yard and a ten- (10) foot side yard in which no portion of the structure shall extend. The variance is requested for the construction of a house addition.

The subject property is Lot 77, Realty Park located at 22 Maryland Avenue, Gaithersburg, Maryland, in the R-90 (Medium Density Residential) Zone (Tax Account No. 842256).

Operative Facts

On March 29, 2006, Christine Kirby, the property owner of 22 Maryland Avenue, filed a variance petition. The petition requested a twenty-one (21) foot variance of the thirty (30) foot rear yard required by Section 24-32(c) of the Zoning Ordinance.

The public hearing was held by the Board of Appeals on Thursday, April 20, 2006, at 7:30 p.m. at City Hall. Notice of the public hearing was published in the April 5, 2006, issue of the *Gaithersburg Gazette*; the property was properly posted, and notice of public hearing was sent to the applicant and surrounding property owners on April 5, 2006.

The Board reviewed 27 exhibits, including a house location plat, elevations, floor plan, site photographs, letters of support from adjoining property owners, and a statement by the property owner. Testimony in favor of the variance was heard from the applicant's agent, Mr. Richard Kirby. Mr. Kirby stated that the lot was unique due to its exceptional shallowness relative to other lots in the surrounding neighborhood. Mr. Kirby noted that typical lots in Realty Park, as shown on Exhibit #4, are 200 feet deep while the lot in question is 100 to 120 feet deep. The lot is also unique because of the curvature of Maryland Avenue at the front of the property, which affected the placement of the house on the lot. There is also an additional ten feet of street dedication in the front of the property that does not exist on other lots in the neighborhood and that further increases the shallowness of the lot. Mr. Kirby also stated that a twelve (12) foot variance of the rear yard requirement was granted for this property in 1978 for the purpose of building a rear deck.

According to Mr. Kirby's testimony, the purpose of the variance request is to accommodate a house addition to include a family room/sunroom that would be open to a redesigned existing kitchen. According to Exhibit #6, the proposed one-story addition would extend an additional 16 feet to the rear of the existing house, with an additional five feet for a portion of the deck and a stairway leading to the rear yard. The 8'10" x 14' deck would be attached to the existing raised patio, which will be converted to a sunroom. Mr. Kirby also presented photographs showing substantial landscaping surrounding the property, and indicated that this landscaping will significantly reduce the visual impact of the addition from adjoining properties. He also noted that a detached garage at 3 Highland Avenue, which abuts the rear yard of 22 Maryland Avenue, serves to block that home's view of the rear yard at 22 Maryland Avenue.

Mr. Kirby further testified that the applicant had considered another location for the addition, behind the existing garage. While the alternate location would have reduced the variance request, it would have been too far from the center of the house and could not have achieved the internal traffic pattern desired for this project. There was no additional testimony in favor of, or in opposition to the subject request.

Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City of Gaithersburg Code) are among the provisions which define the nature and extent of this variance may be granted by this Board and the criteria upon which they may be approved.

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DIVISION 2. R-90 ZONE. MEDIUM DENSITY RESIDENTIAL

Sec. 24-32. Dimensional requirements.

In the R-90 Zone:

(c) The depth of each front yard and rear yard shall be no less than thirty (30) feet. The depth of each side yard shall be no less than ten (10) feet.

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Sec. 24-187. Powers and duties.

The board of appeals shall have the following functions, powers, and duties:

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(c) Variances. To authorize on appeal in specific cases a variance from the strict application of the terms or requirements of this chapter.

In granting any variance the board may prescribe appropriate conditions and limitations in conformance with this chapter. Violations of such conditions and limitations shall be deemed a violation of this chapter and, further, shall constitute grounds for revocation of such variance.

The provisions shall not be construed to permit the board, under the guise of a variance, to authorize a use of land not otherwise permitted in the zone involved or permit a variance specifically prohibited by the terms of the chapter or grant a variance that will increase the intensity of an existing non-conforming use.

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Sec. 24-189. Findings required.

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(c) Variances. A variance from the terms of this chapter may be authorized by the board of appeals upon proof by the evidence of record that:

(1) By reason of exceptional narrowness, shallowness, shape, topographical conditions or other extraordinary situations or conditions peculiar to a specific parcel of property or improvements thereon, the strict application of the terms and regulations of this chapter would result in peculiar or unusual difficulties to, or exceptional

or undue hardship upon, the owner's use of his property;

(2) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional circumstances;

(3) Such variance will not be detrimental to the use and enjoyment of neighboring properties;

(4) Such variance can be granted without substantial impairment to the approved master plan affecting the subject property;

(5) Such variance will not substantially impact or affect the character of the surrounding neighborhood;

(6) The extraordinary situation or condition or the exceptional or undue hardship was not caused or created by the petitioner or any predecessor in interest; and

(7) The granting of the variance will not permit or authorize use of property, prohibited or not permitted under the terms of this chapter.

Findings and Conclusions

Based on the petitioners' binding testimony and evidence of record, the Board finds that the property is unique and unusual in a manner different from the surrounding properties due to the shallowness of the lot, the curvature of the front lot line and the additional 10-feet of road dedication, and that the unique or unusual circumstances causes the zoning standards to impact disproportionately on the property relative to the lots in the surrounding neighborhood.

By reason of the aforesaid unique condition, the Board has found that the strict application of the terms and regulations of this chapter would result in peculiar or unusual practical difficulties to the owners' use of their property. The Board has found, based on the evidence presented in Exhibit #25, that the additional nine feet over the variance granted in 1978 is justified as the minimum reasonably necessary to overcome the aforesaid exceptional circumstances. While relocating the addition in another portion of the rear yard would have reduced the required variance, the alternate location is too far from the center of the house to achieve an efficient and desired floor plan.

The granting of a variance will not be detrimental to the use and enjoyment of neighboring properties. This finding is supported by the letters from the adjoining property owners. Additionally, the applicant has provided evidence of substantial landscaping and

the existence of a garage on a neighboring property, all of which will significantly shield the addition from adjacent property owners' view.

The Board finds that such a variance will not substantially impact or affect the character of the surrounding neighborhood. The Board notes that the variance can be granted without substantial impairment to the approved master plan affecting the subject property.

In conclusion, the Board of Appeals has found that the petitioners have submitted sufficient evidence and testimony for the approval of a 21 foot rear yard variance at 22 Maryland Avenue, in accordance with the plans submitted.

R E S O L U T I O N

NOW, THEREFORE, BE IT RESOLVED by the Board of Appeals of the City of Gaithersburg on the 11th day of May, 2006, that Case A-524, the petition of Christine Kirby, requesting a 21 foot variance of the thirty (30) foot rear yard required in Section 24-32(c) of the City of Gaithersburg Zoning Ordinance for the construction of a house addition at 22 Maryland Avenue, Lot 77, Realty Park, Gaithersburg, Maryland, be GRANTED.

Adopted unanimously by the Board of Appeals of the City of Gaithersburg on the 11th day of May, 2006. Board Members Kaye, Knoebel, Trojak, Macdonald, and Rieg being present and voting in favor of the action.

Harvey Kaye, Chairperson
Board of Appeals

DATE

THIS IS TO CERTIFY that the foregoing Resolution was adopted by the City of Gaithersburg Board of Appeals, in public meeting assembled, on the 11th day of May, 2006.

Caroline H. Seiden, Planner
Staff Liaison to the Board of Appeals

Any decision by the City Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a part to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

The Board of Appeals may reconsider its decision in accordance with its Rules of Procedure upon the request of any party; provided such request is received by writing not more than ten (10) days from the date the Board of Appeals renders its final decision.